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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

CURTIS BURNETT,

Petitioner,

v.

WORKERS' COMPENSATION APPEALS
BOARD, MADERA ROOFING, INC. et al.,

Respondents.

F043137

(WCAB No. FRE 0066922)

THE COURT*

ORIGINAL PROCEEDINGS; petition for writ of review. Steven H. Webster,
Administrative Law Judge.

Bradley A. Arnold, for Petitioner.

No appearance by Respondent Workers' Compensation Appeals Board.

Louis Harris, for Respondents Madera Roofing, Inc. and State Compensation
Insurance Fund.

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*Before Vartabedian, Acting P.J., Buckley, J., and Cornell, J.

Curtis Burnett petitions for a writ of review to inquire into and determine the lawfulness of the decision of the Workers' Compensation Appeals Board (WCAB). (Lab. Code,¹ § 5950; Cal. Rules of Court, rule 57.) Burnett claims the WCAB misapplied the law by refusing to reopen a 1987 stipulated disability award he believes his employer obtained by fraud. We will deny the petition.

BACKGROUND

Curtis Burnett injured his back on November 1, 1983, while working as a roofer trainee for Madera Roofing, Inc. (Madera Roofing). On November 9, 1983, Madera Roofing certified to its workers' compensation insurer, the State Compensation Insurance Fund (SCIF), that Burnett worked 40 hours per week at a rate of \$6.67 per hour at the time of the injury. On December 9, 1986, Burnett, his attorney, and a SCIF representative adopted a stipulation asking the WCAB to issue Burnett a 100 percent disability award payable at \$155.64 per week, less attorney fees. A workers' compensation judge (WCJ) accepted the stipulation and issued the requested award on January 6, 1987.

In April 2002, over 18 years after the injury, Burnett wrote the WCAB disagreeing with the stipulated award. Burnett claimed his employer intentionally provided false earnings information to the WCAB and that he was a maximum wage earner under the workers' compensation laws. He asked the WCAB to set aside and recalculate the award applying his actual earnings of \$100 per day. The WCAB treated Burnett's letter as a petition to reopen his disability claim based on fraud.

A WCJ denied Burnett's request after a January 2003 workers' compensation hearing. In a March 14, 2003, decision, the WCJ concluded that even if Burnett's allegations were true, any fraud on the part of his employer was intrinsic to the proceedings and insufficient cause to reopen the stipulated award. Burnett petitioned for

¹ Further statutory references are to the Labor Code.

reconsideration, which the WCAB denied on April 18, 2003, by adopting and incorporating the WCJ's report and recommendation.

DISCUSSION

In reviewing a WCAB decision, an appellate court must determine whether, in view of the entire record, substantial evidence supports the WCAB's findings. (§ 5952; *Garza v. Workers' Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317.) This court is precluded from substituting its choice of the most convincing evidence for that of the WCAB and may not reweigh the evidence or decide disputed questions of fact. (§ 5953; *Western Growers Ins. Co. v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 227, 233.) We will not accept, however, unreasonable, illogical, improbable, or inequitable findings of the WCAB in light of the overall scheme of the workers' compensation laws. (*Bracken v. Workers' Comp. Appeals Bd.* (1989) 214 Cal.App.3d 246, 254.)

The WCAB retains continuing jurisdiction over a workers' compensation claim for five years from the date of injury if the employee suffers a "new and further disability" or upon a showing of "good cause." (§§ 5410, 5803, 5804; see 2 Hanna, California Law of Employee Injuries and Workers' Compensation (rev. 2d ed. 2002) §§ 28.03[1], 31.02, 31.04.) Burnett believes the WCAB erred by not exercising its authority to reopen his claim for "good cause" under section 5803. Despite Burnett's contention, the WCAB had no such authority here. A WCAB order approving a stipulated award, like other WCAB awards, constitutes a final judgment entitled to full res judicata effect unless an interested party petitions to reopen the matter within the five-year jurisdictional period. (§ 5804; *Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160, 1170, citing *Kulchar v. Kulchar* (1969) 1 Cal.3d 467, 470-471.) Burnett did not petition the WCAB to reopen his claim within five years from the date of his injury and the WCAB's continuing jurisdiction under section 5803 had thus ended.

Burnett further contends the WCAB erred by not reopening his claim by finding Madera Roofing engaged in extrinsic fraud. Once the WCAB's jurisdiction lapses, "an

award may be set aside only upon a showing of fraud or mistake of the kind generally referred to as ‘extrinsic’ fraud or mistake.” (*Smith v. Workers’ Comp. Appeals Bd.*, *supra*, 168 Cal.App.3d at p. 1170.) To determine whether a case involves extrinsic fraud or mistake, “ ‘[i]t is necessary to examine the facts in the light of the policy that a party who failed to assemble all his evidence at the trial should not be privileged to relitigate a case, as well as the policy permitting a party to seek relief from a judgment entered in a proceeding in which he was deprived of a fair opportunity fully to present his case.’ ” (*Kulchar v. Kulchar*, *supra*, 1 Cal.3d at pp. 473.)

“Extrinsic fraud usually arises when a party is denied a fair adversary hearing because he has been ‘deliberately kept in ignorance of the action or proceeding, or in some other way fraudulently prevented from presenting his claim or defense.’ ” (*Kulchar v. Kulchar*, *supra*, 1 Cal.3d at p. 471.)

“By contrast, fraud is intrinsic and not a valid ground for setting aside a judgment when the party has been given notice of the action and has had an opportunity to present his case and to protect himself from any mistake or fraud of his adversary but has unreasonably neglected to do so. [Citation.] Such a claim of fraud goes to the merits of the prior proceeding which the moving party should have guarded against at the time. Where the defrauded party has failed to take advantage of liberal discovery policies to fully investigate his claim, any fraud is intrinsic fraud.” (*City and County of San Francisco v. Cartagena* (1995) 35 Cal.App.4th 1061, 1067-1068; see *Home Ins. Co. v. Zurich Ins. Co.* (2002) 96 Cal.App.4th 17, 27.)

Similarly, one party’s unilateral mistake is “certainly not the type of mistake that would constitute a sufficient ground upon which to set aside a final judgment.” (*Smith v. Workers’ Comp. Appeals Bd.*, *supra*, 168 Cal.App.3d at p. 1170.) Extrinsic mistake occurs where the moving party’s *excusable* neglect provides the basis for relief rather than defendant’s fraudulent or deceitful conduct. (*Kulchar v. Kulchar*, *supra*, 1 Cal.3d at p. 471.) Equity denies relief from a party’s own negligence or contribution in permitting the fraud or mistake. (*Id.* at p. 472.)

Burnett asserts he established that his employer deliberately submitted documentation in 1983 that significantly underestimated his wages while working for Madera Roofing. He believes that if Madera Roofing had reported his actual earnings of \$100 per day, SCIF would have agreed to increased disability payments in the stipulation requesting the award. Burnett admits that the only documentary wage evidence submitted, during both the original and current proceedings, was his employer's incorrect wage certification. Burnett thus offers this court no evidence to support his allegation that the wages reported in 1983 were incorrect.

Even assuming Madera Roofing knowingly submitted a false wage certification so SCIF would calculate lower disability benefits, Burnett fails to prove the award was obtained by *extrinsic* fraud or mistake. The WCAB reasonably found that any false information provided by Burnett's employer was *intrinsic* to the proceedings.

"Generally, the introduction of perjured testimony or false documents, or the concealment or suppression of material evidence is deemed intrinsic fraud." (*Home Ins. Co. v. Zurich Ins. Co.*, *supra* 96 Cal.App.4th at p. 27.)

Burnett knew how much he was paid and could have offered SCIF and the WCAB contrary documentary or testimonial evidence before agreeing to the stipulated award. Moreover, counsel represented Burnett in negotiating the stipulated award and had access to liberal discovery tools to determine Burnett's actual earnings. While Burnett portrays himself at the time of stipulated agreement as "young, unsophisticated, facing the prospect of perpetual paraplegia, and heavily medicated for pain," the WCJ found Burnett demonstrated "a laser like memory as to the amount of pay at trial, over fourteen (14) years later." As the WCJ stated, "cluelessness does not constitute extrinsic fraud." The WCAB correctly reasoned Burnett was afforded due process and that nothing extrinsic to the proceedings precluded him from discovering the wages used by SCIF to calculate his stipulated award. Absent a showing of extrinsic fraud or mistake, there was no legal basis for the WCAB to set aside the 1987 award.

DISPOSITION

The petition for writ of review is denied. This opinion is final forthwith as to this court.